IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 4517 of 1993

KANHAIYA LAL
V/S
K U M S

Mr. ANIL VYAS for Mr. SD VYAS, for the appellant / petitioner

Mr. RL JANGID, for the respondent

Date of Order : 11.12.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this writ petition, the petitioner seeks to challenge Annexure-9, and the letter of the Dy. Secretary dt. 17.5.1993, so also prays that the case of the applicant be considered for allotment of the shop, and that the earmarked 61 shops should be allotted as per seniority list, wherein the petitioner should also be allotted one shop.

The pleadings taken by the petitioner in this regard are, that the petitioner was allotted one shop, but the petitioner required one more shop and godown. Then, it is alleged, that the respondents no. 1 and 2, hereafter to be referred to as the Mandi Samiti, advertised 61 shops for allotment, and invited applications vide advertisement Annexure dt. 16.5.1992 (Annex.2), and the pamphlet issued

by the Mandi Samiti stating conditions of allotment, descriptions of shop, guidelines issued by the Government have been produced as Annexure 3 and 4. Then, it is alleged that the petitioner applied for allotment of shop, by filing application in time, disclosing the figures of his turn over etc. However, surprisingly resolution Anexure-9 was adopted, referring to the communication of the State Government dt. 17.5.1993, and it was resolved, that the earlier decision of the allotment committee dt. 6.4.1992, so far as it had resolved to lapse earlier merit list, was recalled, and allotments were resolved to be made from out of that list, according to merit, so also to the persons who were having stay orders from this Court. Then, it is contended that resolution Annexure-9 decides to allot the shops to all the 293 applicants, notwithstanding their standing below the petitioner, in merit. It is also contended, that there is no reason given for canceling the advertisement, and advertisement cannot be so cancelled without any rhyme, or reason.

A reply has been filed on behalf of Mandi Samiti, contending interalia, that the petitioner is having one shop number P-8, which allotted on 6.4.1992, and that, so far requirement of other shop, and godown is concerned, requirement of the trader is not relevant criteria, rather relevant criteria is entitlement under the existing rules and regulations, which bar the licensee to get allotment of

another shop. Then, it is pleaded that no action has been taken in pursuance of advertisement Annexure-2, no merit list was prepared in view of the Government order dt. 17.5.1993 Annexure R/1, whereby the State Government directed the Mandi Samiti, that allotment of shops including newly constructed shops be made out of the persons holding priority, in the priority list prepared previously in the year 1988, and therefore, fresh priority list was not prepared. Then, break up was given as to how the list prepared in 1988 is sought to be operated, and allotments were made.

A rejoinder has been filed, contending interalia, that there are persons, and persons, to whom more than one shop have been allotted. The names of the persons so allotted more than one shop at Mandore Mandi, have been listed in Schedule-B.

I have heard learned counsel for the parties, and have considered the submissions.

Learned counsel for the petitioner was pointedly asked, as to what is the date of document Annexure-10, being the list of 293 persons, and the learned counsel expressed his inability to give any date. In this background, a look at para-8 of the reply shows, that this list of 293 persons was prepared in the year 1988, being

the persons whose applications were received. In this background, significantly, the petitioner's name, admittedly, does not figure in this list Annexure-10, notwithstanding this, as contended by the learned counsel for the respondent Mandi Samiti, that the petitioner was allotted shop no. P-8 on 6.4.1992, and this fact is not controverted on the side of the petitioner, nor has it been disclosed, as to, by what process did he come to be allotted this shop no. P-8, on 6.4.1992, or on any other date, notwithstanding his name not finding place in Annexure-10. In this background it has also not been disclosed by the petitioner, as to when, the first, or both the shops, were allotted to the persons listed in Schedule-B, filed with the rejoinder. That being the position, when the advertisement Annexure-2 has not been proceeded ahead, and no allotment of any shop has been made to any person, standing below the petitioner in merit, pursuant to the advertisement Annexure-2, simply because the applicants who were standing in queue in the year 1988, could not be allotted the shop so far, were decided to be allotted shops vide Government orders dt. 17.5.1993, and when the petitioner is already having one shop number P-8, having been allotted on 6.4.1992, it cannot be said, that there was anything wrong in Annexure-9, or communication of the State Government dt. 17.5.1993, so as to require interference in favour of the petitioner, in this writ petition.

I find from the perusal of the stay file, that the petitioner had prayed for keeping one shop vacant, or in the alternative to allow the petitioner to start his business in private premises, beyond Mandi till disposal of the writ petition. This stay application was filed on 28.8.1993. However, after sizeable number of adjournments, ultimately on 4.10.1996 the application was not pressed. It is informed, that allotments pursuant to Annexure-9 have already been made, and person to be affected in the event of any interference being made in favour of the petitioner have not been impleaded as party in the writ petition, nor any persons so being adversely affected, or likely to be adversely affected by quashing of Annexure-9, have been impleaded as party. Be that as it may.

Considering the totality of circumstances, in my view, in view of the above discussion, the petitioner cannot be said to be entitled to the reliefs claimed in the writ petition.

The writ petition thus has no force, and the same is dismissed.

(N P GUPTA),J.

/Sushil/